67. Ameritech's attempt to reinterpret "shared" transport to mean dedicated rather than common transport violates these and other provisions of the Act and FCC regulations, and delays entry by competing LECs and reduces their ability to compete. The FCC is currently considering a motion to clarify that such an interpretation is wrong.

D. Terminating Access

68. Among the capabilities of the unbundled local switch is the capacity to provide the switching element of terminating access services. Terminating access services are services provided by local exchange carriers to long distance carriers that reflect the local exchange carrier's delivery of a long distance call from the long distance carrier's "point-of-presence" in the area to the called party. Terminating access services include transport from the interexchange carrier point-of-presence to the local switch that serves the called party, local switching, and the routing of that call over the local loop to the called party. The LEC receives access charges from the long distance carrier for the provision of such services.

69. The FCC has defined the unbundled local switching element as the incumbent LEC's line-side and trunk-side facilities plus all features, functions, and capabilities of the switch. 47 C.F.R. § 51.319(c). The FCC has specified that the competing LEC purchaser of the unbundled local switching element is entitled to recover terminating access charges from the long distance carrier whose customer is calling the called party. Id. ¶ 363 n.772. In its own sua sponte reconsideration order, the FCC made it clear that "the carrier that provides the unbundled local switching element to serve an end user effectively obtains the exclusive right to provide all features, functions and capabilities of the switch, including

switching for exchange access and local exchange services, for that end user." Order on Reconsideration, ¶ 11.

70. The Act provides that carriers are entitled to purchase nondiscriminatory access to unbundled network elements, Section 251(c)(3), and the FCC's implementing regulations establish that purchasers of the unbundled network element are permitted to provide all forms of telecommunications services including terminating access services. 47 C.F.R. § 51.307(c). Thus, the incumbent LEC may not restrict the services that may be offered by a purchaser of unbundled network elements, including the unbundled local switching element and the platform. First Report and Order, ¶ 292.

71. Under the Act, a competing LEC purchaser of the unbundled local switching element may offer terminating access services to the long distance provider of an end user who is seeking to connect with the competing LEC's customer.

72. The FCC also made clear that the competing LEC purchaser of the unbundled local switching element is entitled to recover terminating access charges from the long distance carrier whose end user is calling the competing LEC's customer – including the residual interconnection charge, the local switching charge, and the common carrier line charge:

> "We also note that where new entrants purchase access to unbundled network elements to provide exchange access services, whether or not they are also offering toll services through such elements, the new entrants may assess exchange access charges to [interexchange carriers] originating or terminating toll calls on those elements. In these circumstances, incumbent LECs may not assess exchange access charges to such [interexchange carriers] because the new entrants, rather than the incumbents, will be providing exchange access services, and to allow otherwise would permit incumbent LECs to receive compensation in excess of network cost in violation of the pricing standard in section 252(d)."

First Report and Order, ¶ 363 n.772.

73. The Agreement, as interpreted by Ameritech, contravenes Sections 251(c)(3) and 252(d)(1) of the Act and the FCC's binding regulations. If a competing LEC determines that it will provide terminating access services to interexchange carriers, then it is entitled to collect terminating access charges from long distance carriers whose end users call the competing LEC's unbundled local switching element customers.

74. In violation of the Act and FCC regulations, Ameritech's interpretation of the Agreement attempts to force competing LECs to bundle different network elements in a particular way -- unbundled local switching with Ameritech's dedicated or "shared" transport -- before the competing LECs can receive the terminating access charges to which they are entitled under the FCC's First Report and Order. Ameritech's interpretation restricting AT&T's provision of terminating access services violates the Act and applicable regulations.

COUNT ONE

(Failure to Require Ameritech to Provide Customized Routing and an Unbundled Element Platform Without OS/DA)

75. AT&T repeats and realleges paragraphs 1 through 74 above as if fully set forth herein.

76. The Agreement and the MPSC's determination fail to require Ameritech to provide, as a standard offering, customized routing for operator services and directory assistance and to provide technically feasible combinations of elements. This violates and does

not meet the requirements of 47 U.S.C. §§ 251(c)(3) and the FCC regulations implementing that provision.

77. The MPSC's determination, in failing to require customized routing for operator services and directory assistance, is arbitrary and capricious, an abuse of discretion, contrary to law, and not supported by the record.

78. AT&T has been aggrieved by the MPSC's determinations as set forth herein.

79. Plaintiff AT&T is therefore entitled to declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201, 2202 and 47 U.S.C. § 252(e)(6).

COUNT TWO

(Failure to Require Route Indexing as an Interim Number Portability Method)

80. AT&T repeats and realleges paragraphs 1 through 79 above as if fully set forth herein.

81. The provisions in the Agreement failing to require route indexing as an interim number portability method and the MPSC's determination with respect to that portion of the Agreement violate and do not meet the requirements of 47 U.S.C. §§ 251(b)(2) and 251(c)(3) and the FCC regulations implementing those statutory provisions.

82. The MPSC's determination, in failing to require route indexing as an interim number portability method, is arbitrary and capricious, an abuse of discretion, contrary to law, and not supported by the record.

83. AT&T has been aggrieved by the MPSC's determinations set forth herein.

84. Plaintiff AT&T is therefore entitled to declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201, 2202 and 47 U.S.C. § 252(e)(6).

COUNT THREE

(Common Transport)

85. AT&T repeats and realleges paragraphs 1 through 84 above as if fully set forth herein.

86. There is an actual controversy between AT&T and Ameritech regarding whether the Agreement requires Ameritech to provide common transport as an interoffice transmission facility. To the extent that the Agreement does not require common transport as an interoffice transmission facility, that portion of the Agreement and the MPSC's determination with respect to that portion of the Agreement violate and do not meet the requirements of 47 U.S.C. § 251(c)(3) and the FCC regulations implementing those statutory provisions.

87. To the extent that the Agreement does not require common transport as an interoffice transmission facility, AT&T has been aggrieved by the MPSC's determination as set forth herein.

88. Plaintiff AT&T is therefore entitled to declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201, 2202 and 47 U.S.C. § 252(e)(6), including a declaration that the Agreement requires Ameritech to provide common transport as an interoffice transmission facility. To the extent that the Agreement does not require common transport as an interoffice transmission facility, AT&T is entitled to a declaration that the Agreement violates the Act.

COUNT FOUR

(Terminating Access Service)

89. AT&T repeats and realleges paragraphs 1 through 88 above as if fully set forth herein.

90. There is an actual controversy between AT&T and Ameritech regarding whether Ameritech can interfere with AT&T's provision of terminating access services as part of the unbundled local switching element and prohibit AT&T's collection of terminating access charges. To the extent that the Agreement does not permit AT&T to provide terminating access services as part of the unbundled local switching element and collect access charges, that portion of the Agreement and the MPSC's determination with respect to that portion of the Agreement violate and do not meet the requirements of 47 U.S.C. § 251(c)(3) and the FCC regulations implementing those statutory provisions.

91. To the extent that the Agreement does not permit AT&T to provide terminating access services as part of the unbundled local switching element and to collect

terminating access charges, AT&T has been aggrieved by the MPSC's determination as set forth herein.

92. Plaintiff AT&T is therefore entitled to declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201, 2202 and 47 U.S.C. § 252(e)(6), including a declaration that the Agreement permits AT&T to provide terminating access services as part of the unbundled local switching element. To the extent that the Agreement does not permit AT&T to provide terminating access services as part of the unbundled local switching element, AT&T is entitled to a declaration that the Agreement violates the Act.

PRAYER FOR RELIEF

WHEREFORE, AT&T requests that this Court grant it the following relief:

(a) Declare that the provisions of the Agreement and the MPSC Order failing to require Ameritech to provide, as a standard offering, an Unbundled Element Platform without operator services and directory assistance violate Section 251 of the Telecommunications Act of 1996 and the FCC's implementing regulations;

(b) Declare that the provisions of the Agreement and the MPSC Order failing to require Ameritech to provide route indexing as an interim number portability option violate Section 251 of the Telecommunications Act of 1996 and the FCC's implementing regulations;

(c) Declare that the Agreement permits AT&T to provide terminating access services as part of the unbundled local switching element and to collect terminating access

charges, or, in the alternative, that the Agreement violates the Act for failing to include such a provision;

(d) Declare that the Agreement requires Ameritech to provide common transport as an interoffice transmission facility, or, in the alternative, that the Agreement's provisions regarding interoffice transmission facilities violate the Act for failing to include such a provision;

(e) Enjoin defendants from enforcing any provisions of the Agreement that are inconsistent with the declaratory relief sought herein;

(f) Enjoin defendants from imposing any agreement on AT&T that does not contain the contract language proposed by AT&T relevant to customized operator services and directory assistance routing;

(g) Enjoin defendants from imposing any agreement on AT&T that does not contain the contract language proposed by AT&T relevant to the provision of route indexing as an interim number portability method;

(h) Direct the reformation of the Agreement and the inclusion of contract language consistent with the 1996 Act and the decision of this Court; and

(i) Award AT&T such other and further relief as the Court deems just and proper.

Dated: January 24, 1997

Respectfully submitted,

AT&T COMMUNICATIONS OF MICHIGAN, INC.

By _____

William Davis
Joan Marsh
AT&T COMMUNICATIONS OF MICHIGAN, INC.
4660 S. Hagardorn
East Lansing, MI 48823
(517) 332-9608

George Hogg (P15055)
Arthur J. LeVasseur (P29394)
Sidney M. Berman (P30701)
FISCHER, FRANKLIN & FORD
3500 Guardian Building
Detroit, MI 48226
(313) 962-5210

Attorneys for AT&T Communications of Michigan, Inc., Plaintiff

EXHIBIT "A"

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

AT&T COMMUNICATIONS OF MICHIGAN, INC.	)	
Petition for Arbitration of Intercomnection Rates, Terms and Conditions and Related Arrangements with Michigan Bell Telephone Company d/b/a Ameritech Michigan.	)))	Case No. U-11151 Case No. U-11152

DECISION OF ARBITRATION PANEL

I.

HISTORY OF PROCEEDINGS

On February 27, 1996, AT&T Communications of Michigan, Inc. (AT&T) requested that Michigan Bell Telephone Company d/b/a Ameritech Michigan (Ameritech) enter into negotiations pursuant to §§ 251 and 252 of the Telecommunications Act of 1996 (the Act), 47 USC §§ 251 and 252, to establish an interconnection agreement with Ameritech. During the months that followed, the parties began negotiations regarding a generic agreement involving the networks in the various states in which both companies (or their affiliates) operate -- namely, Illinois, Indiana, Michigan, Ohio and Wisconsin. As defined in the Act, Ameritech is an Incumbent Local Exchange Carrier (ILEC). AT&T is a "requesting telecommunications carrier" within the meaning of 47 USC 252(a) of the Act, a "telecommunications carrier" as defined by 47 USC 153(a)(44) of the Act, and a "local exchange carrier" (LEC) as defined by 47 USC 153(a)(26) of the Act.

On June 10, 1996, Ameritech submitted to the Michigan Public Service Commission (Commission), and the Commission's counterparts in the other four states in the Ameritech region,

requests for mediation pursuant to § 252(a) of the Act. These mediations were not successful in reaching agreement on a substantial number of issues.

On August 1, 1996, AT&T filed a Petition for Arbitration with the Commission, seeking arbitration of the terms, conditions and prices for interconnection and related arrangements from Ameritech, pursuant to § 252(b) of the Act and in accordance with the procedure adopted by the Commission in its Order dated July 16, 1996 in Case No. U-11134. AT&T's Petition was assigned Case No. U-11151 by the Commission. At the same time, AT&T filed proposed direct testimony and exhibits.

On August 2, 1996, Ameritech filed a Petition for Arbitration requesting that the Commission arbitrate issues relating to collocation of AT&T equipment on Ameritech premises and pricing for such collocation, AT&T's costs for local traffic termination and AT&T's obligations under § 251(b) of the Telecommunications Act of 1996. Ameritech's Petition was assigned Case No. U-11152. Thereafter, Case Nos. U-11151 and U-11152 were consolidated into a single arbitration proceeding.

On August 2, 1996, an arbitration panel (the Panel) was appointed consisting of Administrative Law Judge Robert E. Hollenshead and Commission Staff members Ann R. Schneidewind and Louis R. Passariello.

On August 14, 1996, the parties met with the Panel to discuss procedural and scheduling matters. At this meeting, the Panel established the controlling dates for each activity required by the parties, the Panel and the Commission. In addition, the Panel requested the parties establish a common framework for addressing disputed issues. Following the initial meeting, each party met separately with the Panel to discuss the issues being presented for resolution and the position of the

parties with respect to these issues.

On August 23, 1996, AT&T filed a Joint Motion with TCG to sever Ameritech's cost study from the arbitration proceeding and to have it considered in a separate proceeding. Ameritech filed its reply to the Joint Motion on August 30, 1996. As of the date of issuance of this Decision of the Arbitration Panel, the Commission has not acted on this motion.

On August 26, 1996, Ameritech filed its Response to AT&T's Petition and proposed testimony and exhibits in support of its positions. On August 27, 1996, AT&T filed its Response to Ameritech's Petition denying that the issues Ameritech attempted to raise by its Petition are properly arbitrable under the Act and asked that Ameritech's Petition be dismissed. AT&T's Response to Ameritech's Petition also requested arbitration of all terms and conditions of an interconnection agreement between the parties.

On September 3, 1996, each party submitted requests for additional information. On September 4, 1996, the Panel approved certain of the requests submitted by the parties and also, on September 4, 1996, notified the parties of those requests to which responses were required. Each party filed responses on September 10, 1996. However, the Panel thereafter determined that Ameritech's response was incomplete and directed Ameritech to file further information. Ameritech thereafter filed this requested information.

On September 13, 1996, AT&T submitted its "Resolved and Disputed Contract Language" (also referred to as AT&T's Red Line Agreement) which set forth all terms agreed to by the parties as well as each party's proposed contract language for all disputed portions of the contract.

On September 17, 1996, each party submitted a Proposed Decision of the Arbitration Panel

(PDAP). On September 17, 1996, Ameritech also submitted a redline agreement along with a list of annotations concerning differences in the contracts.

On September 24, 1996, the parties made oral presentations to the Panel in support of their respective PDAPs. On September 25, 1996, the parties rebutted each others PDAP presentations.

On October 1, 1996, AT&T submitted supplemental information regarding resolved issues and an amended PDAP. On October 2, 1996, Ameritech submitted a "red-lined" version of its PDAP which indicated the sections and arguments which could be removed because the parties had resolved the applicable issues.

On October 2, 1996, the parties jointly submitted a "Double-Redlined" version of the proposed interconnection agreement (dated October 1, 1996) including both resolved contract language and proposed language of both AT&T and Ameritech in disputed areas.

II.

DISCUSSION

Section 252(b) of the Act and § 204 of the Michigan Telecommunications Act (MTA) confer jurisdiction on the Commission to arbitrate disputes involving the rates, terms and conditions of agreements between telecommunications carriers respecting interconnection, services or network elements. AT&T, having been unable to reach an agreement with Ameritech, petitioned the Commission to arbitrate an agreement in accordance with § 252(b) of the Act, and § 204 of the MTA.

On July 16, 1996, the Commission, in Case No. U-11134, (In the matter, on the Commission's own motion, to establish a procedure for arbitration under the federal Telecommunications Act of

1996), issued an order to provide a framework for arbitration and to establish a procedure to be followed for arbitration conducted pursuant to § 252 of the Act. This procedure provided for appointment of a three-member arbitration panel consisting of an Administrative Law Judge and two technical staff persons.

On August 8, 1996, the Federal Communications Commission (FCC) released its First Report and Order in CC Docket Nos. 96-98 and 95-185 which discussed the Act, stated positions of various parties on certain sections of the Act, stated the FCC's position concerning these sections of the Act and established certain rules pursuant to the Act. The FCC's August 8, 1996 Order will hereafter in this Decision of the Arbitration Panel be referred to as the FCC Order. The rules issued pursuant to the FCC Order amend (for purposes of this proceeding) subpart 5 of Part 1 of Title 47 of the Code of Federal Regulations (47 C.F.R. 1.1401 et seq.) and add a new Part 51 of Title 47 of the Code of Federal Regulations (47 C.F.R. 51.1 et seq.).

On August 6, 1996, the FCC released an order in CS Docket No. 96-166 where it discussed Section 703 of the Act which addresses, among other things, pole attachments. The FCC's August 6, 1996 order (which is hereafter referred to as the FCC Pole Attachment Order) also amended and added to the FCC's existing pole attachment rules. These pole attachment rules amend subpart J of Part 1 of Title 47 of the Code of Regulations (47 C.F.R. 1.1407 et seq.).

On September 27, 1996, the FCC released its Order on Reconsideration in CC Docket Nos. 96-98 and 95-185. In its September 27 order the FCC established a flat-rated default proxy range for the non-traffic sensitive costs of basic residential and business line ports associated with the unbundled local switching element. In addition, the FCC clarified that, because its First Report and

Order concluded that the local switching element includes dedicated facilities, the requesting carrier is thereby effectively precluded from using unbundled switching to substitute for switched access services where the loop is used to provide exchange access to the requesting carrier and local service by the incumbent LEC.

On September 27, 1996, the Eighth Circuit of the United States Court of Appeals in Docket Nos. 96-3321, 96-3406, 96-3410, 96-3414, 96-3416, 96-3418, 96-3424, 96-3430, 96-3436, 96-3444, 96-3450, 96-3453, 96-3460, 96-3507, 96-3519 and 96-3520 issued a temporary stay of the FCC's August 8, 1996 First Report and Order. On October 15, 1996, the Eighth Circuit Court of Appeals dissolved its September 27, 1996 temporary stay and replaced it with a stay of the FCC's pricing rules and the "pick and choose" rule contained in the FCC's First Report and Order until the court issued its final decision on the merits. The Court specifically indicated that its stay applied only to 47 C.F.R. 51.501-51.515, 47 C.F.R. 51.601-51.611, 47 C.F.R. 51.701-51.717 and 47 C.F.R. 51.809.

All references to contract language and contract sections discussed refer to the October 2, 1996 jointly submitted "Double-Redlined" version of the proposed interconnection agreement filed by Ameritech and AT&T in this proceeding.

III.

DISPUTED ISSUES

ISSUE 1

What prices should be set for Reciprocal Compensation, Transiting, Unbundled Network Elements/Combinations, Collocation and Structures (poles, ducts, conduits and right-of-way)?

DECISION:

Based on its determination regarding the preliminary review of AT&T's and Ameritech's cost study methodologies, the requirements of the Act and this Commission's arbitration procedures delineated in Case No. U-11134, the following interim prices are adopted by this Panel.

1) **Reciprocal Compensation** - The Panel finds AT&T's proposed price of 0.2 cents for end office termination along with its tandem routed rate of 0.06 cents should be adopted. The panel finds Ameritech's proposed prices of 0.6181 cents for end office termination and 0.201 cents for tandem switching excessive, being three times higher than the prices proposed by AT&T. It is noted that Ameritech's proposed prices are also significantly higher than its pending Total Service Long Run Incremental Cost (TSLRIC) rates of 0.3647 cents for end office termination and 0.0744 cents for tandem switching filed in Case No. U-11156.

2) **Transiting** - The Panel is of the opinion that transiting consists of two rate elements: tandem switching and the transport function. While the Panel adopts AT&T's proposed tandem switching rate of .06 cents as an interim rate, the Panel opts for the FCC's shared transport access rates as discussed below. The Panel was unable to determine whether the single rate of 0.12 cents proposed by AT&T or the pre-1997 transiting rate of 0.2 cents proposed by Ameritech properly weigh the switching and transport elements. The Panel therefore adopts two separate interim rates for transiting, the tandem switching rate of 0.06 cents proposed by AT&T and the FCC shared transport access rates discussed elsewhere herein as the appropriate interim rates to be applied to transiting traffic.

3) **Unbundled Loops** - The panel finds AT&T's proposed prices for unbundled loops for

Zones A, B and C of $7.53, $8.93 and $10.37, respectively, should be adopted. In the Panel's view, Ameritech's proposed prices for Zones A, B and C of $15.61, $18.48 and $21.33 are unreasonably high. It is noted that Ameritech's proposed loop prices significantly exceed its pending TSLRIC loop rates of $9.31, $11.84 and $14.67 filed in Case No. U-11156. Given this Commission's adopted arbitration procedures, the Panel finds AT&T's proposed prices to be a more reliable approximation of TSLRIC.

4) **Local Switching** - There exists a wide discrepancy in the port prices proposed by AT&T and Ameritech in this proceeding. Ameritech's proposed price of $10.22 is approximately 20 times greater than the $.54 price proposed by AT&T. Based on this Commission's arbitration procedures of choosing one party's position, the Panel finds AT&T's proposed price of $.54 represents a closer approximation of TSLRIC and should therefore be adopted. It is noted that Ameritech's proposed price of $10.22 is not remotely close to its TSLRIC rate of $2.12 pending before the Commission in Ameritech Advice No. 2438B.

The panel also adopts AT&T's proposed local switching charges of 0.65 cents for the initial minute and 0.22 cents for each additional minute rather than Ameritech's proposed price of 0.5808 cents per minute of use. It is noted that Ameritech's proposed price of 0.5808 significantly exceeds its pending TSLRIC local switching charges of 0.54 cents for the first minute and 0.17 cents for each additional minute pending in Ameritech Advice No. 2438B mentioned above. The panel finds AT&T's proposed local switching charges to be a reasonable approximation of TSLRIC.

5) **Tandem Switching** - The Panel adopts AT&T's proposed price of 0.06 cents rather than

Ameritech's proposed price of 0.1415. Based on the Panel's belief that AT&T's cost methodology more closely approximates TSLRIC, the Panel finds AT&T's proposal appropriate for this element.

6) Dedicated Transport, Switched Transport, Signaling and Database Services, Operator and Directory Services and Collocation - For those network elements and services listed above, items 1 through 5, (with the exception of the transport function associated with transiting) the Panel has followed the Commission's arbitration procedures and chosen one party's position over the other. For the network elements and services discussed in this section, the Panel believes the existing FCC interstate access rates should be adopted. Each of these services includes numerous rate elements a number of which are under investigation by the FCC. These interstate services are the same as will be utilized in the process of local interconnection. There is no justification on the record in this proceeding to establish rates which differ from those established by the FCC for these services. Therefore, the rates already included in Ameritech's toll access tariff should be utilized for these local interconnection services.

7) Structures - Neither Ameritech nor AT&T have included a complete list of proposed prices for pole attachment and other services related to right-of-way access. The Panel therefore does not establish specific prices for right-of-way access herein. Both parties propose generally that prices be set consistent with formulas included in § 224 of the Act in a proceeding to be initiated by the FCC next year. Until that time Ameritech proposes prices set forth in its Pricing Schedule be adopted but has failed to include those prices in the

Schedule. AT&T proposes that rates established by the FCC next year apply retroactively to services utilized until then (§ 16.18 of the Contract).

It is the Panel's belief that under § 361 of the MTA, providers may establish the rates, terms and conditions for attachments under the terms of a formula established in that section. If AT&T disputes the rates that are ultimately established by Ameritech in this area, a complaint may be filed with this Commission for resolution.

The federal Act provides that in the area of right-of-way access, a state may exercise preemptive authority to establish conditions of access (§ 224(c)) of the Act; ¶ 1239 of the FCC Order). Michigan certified to the FCC its regulation regarding right-of-way a number of years ago and this authority has not been affected by the enactment of the MTA. The Panel also notes, however, that there is little difference between the rate setting formulas in § 224(e) of the Act and § 361(3) of the MTA. At this time the Panel adopts and references MTA authority in regard to right-of-way pricing. It is the Panel's belief that if a dispute arises when specific prices are established by Ameritech, AT&T may invoke procedures available to it under state law to resolve any conflict.

In addition, both AT&T and Ameritech proposed prices for Busy Line Verification, Busy Line Verification Interrupt and various nonrecurring charges. The Panel has determined that insufficient information exits on the record for the Panel to make an informed decision. It is the view of the Panel that if one price has to be chosen, then AT&T's proposed price is appropriate since the Panel has found that AT&T's proposed prices have been more consistent with this Commissions's TSLRIC methodology.

For those unbundled network elements proposed by Ameritech but not identified by AT&T (e.g. non basic loops and ports), the Panel has concluded that no decision is required. The issue before us is the price of elements which AT&T has requested. The Panel in not obligated to respond to additional issues brought up by Ameritech in its response to AT&T's petition. If disputes arise as to these network elements, the parties will have to raise the issue with the Commission at a later date.

Along the same line, Ameritech, in response to AT&T's petition, identifies services and prices for billing and collection, cross connect, service coordination and 9-1-1, which AT&T did not address in its petition. As indicated previously above, the issues are defined by AT&T's petition. If disputes arise concerning prices for these services, the parties will have to present the issue to the Commission at a later date if resolution between the parties is not possible.

In regard to unbundled platforms, AT&T's proposed prices are the only prices on the record. Thus the Panel's decision is limited to AT&T's position. Ameritech took the position in its response to AT&T's petition that unbundled combinations should be requested through the bona fide request process and therefore did not propose any prices. Since that time, the parties have negotiated and Ameritech has agreed to provide three combinations as standard offerings but has proposed no specific prices. Under the Commission's arbitration procedure, the Panel is limited to selecting one party's position. Therefore AT&T's combination prices are adopted.

REASONS FOR DECISION:

The proposed pricing schedules of AT&T and Ameritech are the most contested issue in this arbitration proceeding. The pricing standard established by the Act is contained in § 252(d) which includes the requirements for the pricing of three types of services: interconnection and network

elements, transport and termination and wholesale prices for telecommunications services. Wholesale pricing will be discussed separately below. In regard to the first two items the Act provides as follows:

> "(d) PRICING STANDARDS. -
>
> (1) INTERCONNECTION AND NETWORK ELEMENT CHARGES. - Determination by a State commission of the just and reasonable rates for the interconnection of facilities and equipment for purposes of subsection (c)(2) of section 251, and the just and reasonable rate for network elements for purposes of subsection (c)(3) of such section -
>
> (A) shall be -
>
> (I) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable), and
>
> (ii) nondiscriminatory, and
>
> (B) may include a reasonable profit.
>
> (2) CHARGES FOR TRANSPORT AND TERMINATION OF TRAFFIC.-
>
> (A) IN GENERAL. - For the purposes of compliance by an incumbent local exchange carrier with section 251(b)(5), a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless -
>
> (I) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and
>
> (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.
>
> (B) RULES FOR CONSTRUCTION. - This paragraph shall not be construed -
>
> (I) to preclude arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements); or
>
> (ii) to authorize the Commission or any State commission to engage in any rate regulation proceeding to establish with particularity the additional costs of transporting or terminating calls, or to require carriers to maintain records with respect to the additional costs of such calls."

In its First Report and Order in CC Dockets 96-98 and 95-185 issued August 8, 1996, the

FCC delineated, among other things, the regulations which would apply to implementing these pricing provisions of the Act. In summary, the FCC adopted a so-called Total Element Long Run Incremental Cost methodology (TELRIC) to be utilized in pricing interconnection services. Included in these regulations were specified "proxies" for the pricing of a number of network elements as well as for transport and termination. The FCC reasoned that given the short timeframes permitted in the Act for arbitration resolution, proxy prices could be adopted for an interim period of time. This would permit states a longer period of time to analyze detailed cost studies for interconnection services in order to determine compliance with the TELRIC requirements.

As discussed earlier, the Eighth Circuit of the U.S. Court of Appeals has issued a stay of the FCC's pricing rules contained in its August 8th Order, including its TELRIC methodology and the suggested proxies. The Eighth Court has scheduled argument regarding the merits of the cases for January 1997. The FCC has indicated it will appeal to the U.S. Supreme Court the decision to stay its Order.

The MTA and orders by this Commission also contain pricing requirements relevant to interconnection services. In November 1995 amendments to the MTA were enacted including requirements regarding the pricing of local service interconnection. The pricing standard included in the MTA is contained in Section 352 (MCL 484.2352) as follows:

> "Sec. 352. (1) Until January 1, 1997, the rates of a provider of basic local exchange service for interconnection under this article shall be at the provider's total service long run incremental cost of providing the service. After January 1, 1997, the rate for interconnection shall be just and reasonable as determined by the commission."

The Commission's (TSLRIC) methodology was originally delineated in Case No. U-10620. In Case

No. U-10860, the Commission required Ameritech to submit cost studies to permit certain interconnection services to be priced at TSLRIC levels as required by the MTA. The components addressed in that order were unbundled loops, unbundled ports, local call termination and interim number portability. Applications and tariffs filed in response to the orders are now pending before the Commission.

In this proceeding, the pricing alternatives which are pending before this Panel from AT&T and Ameritech are based on the FCC's TELRIC methodology. Whether the stay of the FCC's Order in this regard will be continued or whether the proposed methodology and proxies will be finally upheld by the Courts next year is, of course, unknown at this time. However, timeframes contained in § 252 of the Act compelling state commissions to act on requests for arbitration remain in effect.

Therefore, taking account of state and federal laws, TELRIC and TSLRIC cost methodologies, the positions of AT&T and Ameritech which have been advanced in this proceeding, and the Commission's arbitration guidelines, the Panel has reached its conclusions regarding the pricing issues in this case. The Panel's conclusions are based on five fundamental considerations. First, the Panel believes that the statutory pricing requirements for local interconnection services delineated above and included in state and federal laws are essentially the same. It is important to note that these statutory requirements are the fundamental basis upon which this Panel and ultimately the Commission must rely in reaching its pricing determinations in this proceeding. These requirements remain in place and are unaffected by the recent actions of the U.S. Court of Appeals. Second, a specific discussion of the FCC's TELRIC methodology is included below as well as this Panel's determinations regarding AT&T's and Ameritech's compliance with that methodology as

specified by the FCC. It was on this basis that the parties' positions were developed in this case so it is the Panel's belief that it is important to review the parties' positions in that regard. Should the Court of Appeals' stay of this methodology be lifted, this information will then be available for further determinations in this case. Third, with regard to the federal and state laws, it is the belief of this Panel that there is little difference between the TELRIC methodology adopted by the FCC and the TSLRIC methodology included in the MTA as interpreted by Commission orders on this subject. Therefore, findings regarding compliance with a TELRIC methodology continue to be directly relevant. It is the position of this Panel that the only significant difference between the two methodologies is the treatment of common costs in the pricing of local interconnection services. In its TELRIC methodology, the FCC specified that a portion of common costs be included in the pricing of interconnection items. The Michigan TSLRIC methodology specifically excludes recognition of common costs. However, the just and reasonable pricing standard which, according to the MTA, becomes applicable to interconnection services in 1997, might recognize such costs in price-setting decisions. Therefore, this difference between the two methodologies may only exist in the short term. Fourth, the Panel recognizes, as stated above, TSLRIC studies developed by Ameritech are presently pending before this Commission in Case Nos. U-11155 and U-11156 and in Ameritech Advice No. 2438B for a number of interconnection services. Finally, the Panel recognizes the arbitration guidelines established by this Commission in Case No. U-11134 which state that the Panel will select either the proposal of party A or B except when the "results would be clearly unreasonable or contrary to the public interest."

As a result of these considerations, the Panel adopts the prices which, in its opinion, most